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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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BSG RESOURCES (GUINEA)  
LIMITED, et al.,

Plaintiffs,

v.

17 Civ. 2726 (JFK) (AJP)

GEORGE SOROS, et al.,

Conference

Defendants.

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New York, N.Y.  
September 1, 2017  
10:30 a.m.

Before:

HON. ANDREW J. PECK,

Magistrate Judge

APPEARANCES

GREENBERG TRAURIG, LLP  
Attorneys for Plaintiffs  
BY: MICHAEL LAZAROFF  
NANCY L. SAVITT  
ANNE C. REDDY

WILLKIE FARR & GALLAGHER LLP  
Attorneys for Defendants  
BY: ELIZABETH J. BOWER  
BENJAMIN P. McCALLEN  
JIM FITZMAURICE

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(Case called)

THE COURT: All right. Let's start with Willkie's letter, both because it came in on ECF first and because they were nice enough to now give me a copy with all the exhibits and tabs and all that fun stuff. First --

MR. LAZAROFF: We'll still let them go first, your Honor, but if your Honor would like a copy, here you go.

THE COURT: Excellent. I'm regretting more and more the 150 pages I printed this morning of the exhibits that seemed relevant.

All right. With respect to the declaration, the first issue, my inclination is that you need to produce it.

MR. LAZAROFF: Your Honor, I believe when we were here last time your Honor had pointed out that the reason we put forth the declaration was simply to show there's a good faith basis for the allegations. It's not our intention to use that document. It's not our intention to rely on it, file it. We intend to try to depose the witness jointly, if defendants want to do that, and try to call them for trial, or if we're unable to do that, to get the evidence that defendants or third parties have that would show those types of things. In those circumstances, I believe there's a case from the Southern District which is *Institute for Development of Earth Awareness v. People for Ethical Treatment of Animals*, 272 F.R.D 124.

THE COURT: Why don't you hand a copy of it up.

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MR. LAZAROFF: Yes. Which says that the executed --

THE COURT: Hang on.

MR. LAZAROFF: Sure.

THE COURT: Let me read it.

MR. LAZAROFF: Sure, page 125 is the quote. It's not particularly long.

THE COURT: All right. But most of this seems to deal drafts, not the final affidavit.

MR. LAZAROFF: Correct. If you look at on page 125 the sentence it says: "The executed affidavits of nonparty witnesses remained work product until the lawyer elected to serve and file them." That is the line that we were focused on. That's one case. And then a second case for your Honor is *Stokes v. City of New York*, 2006 WL 2061976, Eastern District of New York.

THE COURT: OK.

MR. LAZAROFF: In that case, your Honor, defendants had obtained the affidavit of the nonparty deponent prior to the deposition. Plaintiff sought a copy prior to deposing the witness. The court denied plaintiff's request, finding the affidavit was "protectable work product," and said "if and when the affidavit is filed in this action or otherwise publicly disclosed, then work product protection clearly will be waived."

This is different, your Honor, than in the cases that

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1 the defendants cited. There they cited *A.F.L. Falck v. E.A.*  
2 *Karay Co.* In that case it was already at the summary judgment.  
3 Evidently they had -- it was much further along in the  
4 discovery process, and the only way to get at the particular  
5 factual confirmation of the -- was from the father. There was  
6 no other way. Here, discovery, we believe, will show the  
7 documents that will sustain what is in the complaint based on  
8 the declarations that we don't intend to use it, to rely upon  
9 it. And in the *Vazquez* case --

10 THE COURT: Why did you get it?

11 MR. LAZAROFF: As your Honor had noted and as  
12 Mr. Solomon said when we were here last time, because the  
13 allegations were such that we felt we needed to have a good  
14 faith basis for doing that. We've given the name of the  
15 intermediary to defendants, as it's in the declaration as well  
16 as the address that's in the declaration. Given that we're  
17 just at the beginning of discovery, your Honor, we feel at this  
18 point it would be not within the rules to go ahead and order it  
19 produced.

20 THE COURT: One, I don't want to be devious on  
21 defendants' behalf, but if they file a Rule 11 motion against  
22 you, you would then file this affidavit saying it's your good  
23 faith basis or among other good faith bases, and then they'd  
24 withdraw their Rule 11 motion.

25 MR. LAZAROFF: We would probably ask in that context,

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1 your Honor, for it to be shown in camera to the judge.

2 THE COURT: I guess on all of this my question is if  
3 this were somebody in the United States who, once they have the  
4 name and address they could easily depose, that's one thing. I  
5 can't say I'm up to speed on Malawi law, but somehow I doubt  
6 that a deposition of this person is likely to happen.

7 MR. LAZAROFF: It is our understanding that he is not  
8 opposed to that. Obviously, not going to -- can't confirm and  
9 affirm that. That's why we asked to get A declaration as sort  
10 of an indication that a person would be willing to testify.  
11 And I would respectfully submit that maybe we should try the  
12 process and see if we are able to get him to be deposed, and  
13 if, in fact, it turns out we've given the information that  
14 should permit that, we're happy to work with defendants to try  
15 to get such a deposition. We would like it also, and then if  
16 that fails, we can at that point revisit the issue.

17 THE COURT: Isn't this just a timing question? If the  
18 witness is deposed, presumably one side or the other is going  
19 to want the affidavit.

20 MR. LAZAROFF: Well, as --

21 THE COURT: One of the -- look, I mean --

22 MR. LAZAROFF: That's the *Stokes* case, in the *Stokes*  
23 case, there was the affidavit prior to the deposition, and the  
24 Court denied that because it is work product and you're going  
25 to depose them. That's why I believe at this point, given that

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1 we just gave them the name at the meet and confer when they  
2 requested -- initially we had called the name confidential.  
3 They asked us to reconsider that, and we did. And they asked  
4 for the address, and we gave them what we have, at least we can  
5 only give them what we know, obviously.

6 THE COURT: What's the work product here? You're  
7 going in circles.

8 MR. LAZAROFF: The work product, your Honor, was that  
9 in order to help us develop the allegations and make sure there  
10 was a basis, we had reached out to try to make sure there was  
11 some basis for it, and we got something that we felt gave us  
12 that good faith basis but not something we intended to use.

13 THE COURT: That's fact information; right?

14 MR. LAZAROFF: It was -- we were also involved in the  
15 process of, you know, making sure because the process was one  
16 we wanted to make sure that we had what we were --

17 THE COURT: Is there any opinion work product in it?

18 MR. LAZAROFF: From the perspective, your Honor, of  
19 this, that we wanted to make sure that the types of allegations  
20 that we were being told had a basis. And just to make sure, we  
21 had that and --

22 THE COURT: But that's not opinion work product.

23 MR. LAZAROFF: Yeah.

24 THE COURT: That's protecting yourself from --

25 MR. LAZAROFF: Very least ask your Honor if we could

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1 show it to your Honor in camera, and then if your Honor's  
2 inclined in that direction --

3 THE COURT: Do you have it here?

4 MR. LAZAROFF: We don't have it here, your Honor.  
5 We'd be happy to submit it just as soon as your Honor would  
6 want it, if that's your Honor's inclination.

7 THE COURT: Submit it, but unless there is something  
8 in your cover letter -- obviously, they don't get a copy of the  
9 affidavit -- but your cover letter should point out to me what  
10 it is that is opinion work product, because otherwise, I think  
11 even if getting the affidavit is work product, the facts in it,  
12 in light of the fact that the witness is in Malawi and may or  
13 may not be deposed voluntarily or otherwise, I think there is a  
14 good faith and a good basis, substantial need under the case  
15 law for them to see what this person told you.

16 MR. LAZAROFF: Of course we'll do what your Honor  
17 directs. We do disagree in terms of the fact that they haven't  
18 attempted to get the deposition yet. If they had, then  
19 their -- you might be right. It might be a timing issue, but  
20 it may be that he would be deposed, and then *Stokes* would rule.

21 THE COURT: Well, the reason lawyers get affidavits,  
22 generally -- I've not forgotten what it was like to be on your  
23 side of the bench -- is so that if the witness says something  
24 different later, they can be impeached. So the fact that you  
25 went the affidavit route instead of an interview with the

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1 witness and notes may have been for that reason.

2 MR. LAZAROFF: Your Honor, it's not our intention to  
3 get it in that capacity.

4 THE COURT: All right. Understood. I'm happy to look  
5 at it in camera to give you -- because it is a privilege,  
6 albeit work product, issue, I'm willing to give you the benefit  
7 of the doubt. But unless there is something in there that  
8 clearly shows your opinion work product, I'm going to order it  
9 produced.

10 MR. LAZAROFF: OK, your Honor.

11 THE COURT: All right. Second -- oh, I had said  
12 previously we would do one and one in fairness. Also, so you  
13 know the schedule here, I've got an 11:00 o'clock conference  
14 call preparing for a new discovery program I'm going to be  
15 doing, and I plan to break from this to do that and bring you  
16 back at 11:15 or 11:30 when I finish that call, to the extent  
17 we're not done before then, and I think at the rate we're  
18 going, we won't be done.

19 MR. LAZAROFF: Your Honor, just one thing.  
20 Defendants' counsel had conferred with us prior to your coming  
21 in this morning, and on our 1B, they've withdrawn their  
22 objections to limiting the production to iron ore mining.

23 Is that correct?

24 MS. BOWER: Yes, with respect to the --

25 MR. LAZAROFF: 1B.



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1 MS. BOWER: -- 1B, the payments to the individuals  
2 identified by plaintiffs, we had through a meet-and-confer  
3 process withdrawn that objection. They have since given us a  
4 list of government officials to search. We've agreed to search  
5 those. Depending on the search results, we will assess burden  
6 at that time.

7 THE COURT: All right. The structure and control  
8 requests, 1A, my inclination is, unless you can tell me that  
9 there is some burden that will be alleviated here, the  
10 restrictions to iron ore should not apply.

11 MS. BOWER: Thank you, your Honor. I think it's  
12 helpful to understand the context in which these claims are  
13 arise. In 2010, Guinea completed its first democratic  
14 election, and after that new government took office, they  
15 undertook a review of mining licenses which had been granted in  
16 the prior military regime. That review ultimately led to the  
17 determination that BSGR, which had obtained lucrative mining  
18 rights in large part with Guinea, had used bribery and  
19 corruption to procure those rights. The Guinean government  
20 then stripped BSGR of its rights and its ability to conduct  
21 mining operations in that country. Since then BSGR and its  
22 principal, Mr. Steinmetz, along with various of his associates,  
23 have been the subject of criminal investigations around the  
24 world relating to the bribery in Guinea.

25 In this case plaintiffs seek to impose liability on

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1 the defendants for what they perceive as the defendants'  
2 efforts, direct and indirect, to influence the outcome and  
3 facilitate that review process. Each of the claims in this  
4 complaint are tied to the activities by the defendants, direct  
5 and indirect, in Guinea, including the contract that was  
6 purportedly tortiously interfered with and the iron ore mining  
7 contracts in Guinea. The allegedly defamatory statements  
8 relate to BSGR's procurement of those mining rights by  
9 corruption or bribery, and the alleged misrepresentations  
10 relate to the review process.

11 By these requests in item 1A, plaintiffs seek to go  
12 much further and seek all communications and documents  
13 concerning coordination between the defendants and the handful  
14 of NGOs. Now, looking just at RWI and NRGi -- excuse me,  
15 Global Witness and NRGi -- RWI is now NRGi -- for example,  
16 those organizations currently work in more than dozens of  
17 countries around the world. Global Witness currently works in  
18 27 different countries according to their website. NRGi  
19 currently works in 20 countries and tracks information relevant  
20 to their mission in 54 other countries, again according to  
21 their website.

22 THE COURT: How much communication and/or funding does  
23 Mr. Soros give to that entity, regardless of how much work  
24 Global Witness and NRGi are doing?

25 MS. BOWER: There is a lot of work in between these

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1 organizations, given their overlapping missions around the  
2 world. But this isn't about funding levels, your Honor. We  
3 know that because plaintiffs' complaint already alleges what  
4 the funding levels from defendant to these organizations are  
5 for the prior few years. This is about literally all documents  
6 concerning any funding activity between the defendant and these  
7 organizations at any point around the world. And regardless of  
8 whether -- we could come back and say 90 percent -- I'm making  
9 this up. This is not reality -- but we could come back and say  
10 90 percent of the funding to RWI is by defendants, but  
11 zero percent in Guinea, and it's not going to advance their  
12 claims at all. They still need to, under the current rules,  
13 tie the discovery requests that they're seeking to the claims  
14 in this case, and that's why we've requested that it be limited  
15 to iron ore mining activities in Guinea.

16 We would consider, as a fallback, you know, activities  
17 funding or communications concerning Guinea if their concern is  
18 iron ore mining isn't sufficiently broad, but activities  
19 involving these organizations around the world is just too  
20 broad, your Honor, and not tethered to the claims in this case  
21 and would be burdensome.

22 THE COURT: Let me hear from plaintiff. What is it  
23 you're trying to show through this?

24 MR. LAZAROFF: One of their defenses, your Honor, is  
25 that they do not control these entities. Our complaint

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1 alleges, based on documents and information that we have, that  
2 NNGI and Global Witness were part of the scheme that Mr. Soros  
3 and the other defendants used to create a process to improperly  
4 deny our clients their rights, the paragraph 80 through 84 and  
5 85, in addition to 76 to 77. Part of that process, for  
6 example, in Guinea was to review mining contracts, not iron ore  
7 mining contracts, and then target it at BSGR, certainly, iron  
8 ore mining.

9 But, your Honor, these particular requests are about  
10 funding, and while there is some publicly available -- with the  
11 exception of the strategic coordination, let's leave that one  
12 to the side -- the funding, as an initial matter, they say,  
13 well, yeah, NNGI does what it does. We talked to them. We do  
14 some overlapping mission work, but they do what they do and we  
15 do what we do. We have indications from public documents that  
16 that's not the case, by the level of funding, the overlapping  
17 boards and other statements, but we'd like to get at the  
18 reality.

19 THE COURT: Instead of communications and documents,  
20 how about the amount of funding?

21 MR. LAZAROFF: Documents sufficient to show the direct  
22 or indirect funding would be helpful. The other aspect, in  
23 addition to the funding, is the control. The control documents  
24 related to the funding would show we're giving you, for  
25 instance, \$500 million, and so we expect you to also do what we

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1 say.

2 THE COURT: All right. But that would --

3 MR. LAZAROFF: So documents that relate to the -- your  
4 Honor, you think about funding for -- it's a grant  
5 organization. So there's an application, an application.

6 There should be a file that they go through the application and  
7 they talk about it and they decide yes or no, and they give it.

8 THE COURT: But if that's --

9 MR. LAZAROFF: The burden seems minor, but in there --

10 THE COURT: Whoa, whoa, whoa. Slow down. If that's  
11 what you're looking for -- and I don't know if you've talked  
12 about this with each other -- that to me strikes me as a  
13 different issue than any and every email between Mr. Soros or  
14 one of his people and each of these entities.

15 MR. LAZAROFF: The point I was trying to make, your  
16 Honor, you're correct, was that if it were just the standard  
17 grant-giving organization to a third party, that's what you  
18 would expect. That's not what we claim happened. In  
19 paragraph 70 in a document -- we cite a document posted in an  
20 online news site that says, "To the extent" -- it was a  
21 document from George Soros outlining his plan to conscript  
22 various agents from the alleged associated entities in  
23 furtherance of his mission. And quoting from the document:  
24 "To the extent we don't have the capacity, we must acquire it.  
25 I shall ask Chris Canavan to take charge. Our initial mission

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1 will arrive in Conakry on January 2 consisting of Abdul  
2 Tejan-Cole, a representative of OSIWA, and Patrick Heller from  
3 Revenue Watch. Chris Canavan will join them as soon as  
4 possible," and then it goes on, your Honor.

5 The point is that emails showing that Mr. Soros is, in  
6 fact, not just providing some third-party funding, but that  
7 funding comes with strings and control and direction is what  
8 we're trying --

9 THE COURT: But then those strings, to be relevant,  
10 have to do with either BSGR or mining in Guinea in order to be  
11 relevant here.

12 MR. LAZAROFF: Well, it depends, your Honor. So,  
13 certainly, in order to be relevant to some aspects of the  
14 claim, their claim is -- if their claim is, in general, we're  
15 independent organizations.

16 THE COURT: OK. Then we're going to take this in baby  
17 steps. Documents sufficient to show or considered in  
18 interrogatory direct or indirect funding by Soros or the other  
19 indicated people on that side of the request and these  
20 organizations as an absolute dollar amount and, to the extent  
21 you have it, a percentage of all of their funding. All right.  
22 Is that doable?

23 MS. BOWER: Yes, your Honor.

24 THE COURT: OK.

25 MR. LAZAROFF: Then the strategic coordination, your

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1 Honor?

2 THE COURT: That would seem to me is related only to  
3 iron ore mining in Guinea.

4 MR. LAZAROFF: But, your Honor, as I pointed out, one  
5 of the central allegations we have is that the whole mining  
6 review process -- it's a mining program. It's not an iron ore  
7 mining code, it's a mining code.

8 THE COURT: OK. Mining, does that work?

9 MS. BOWER: Honestly, your Honor, I don't know the  
10 burden, right. There are no allegations and plaintiffs  
11 certainly haven't suggested that these companies were involved  
12 in gold or some other sort of mining in Guinea. The only  
13 allegations relate to --

14 THE COURT: Well, if they're --

15 MS. BOWER: -- their activities in iron ore.

16 THE COURT: -- somebody on your side should know that,  
17 then presumably the difference between mining and iron ore  
18 mining is meaningless. So I'm ordering it with respect to  
19 mining activities in Guinea. If you find out from your client  
20 or the documents that they were involved in uranium mining,  
21 gold mining, to use your example, then you can come back to me  
22 and ask for that to be excluded.

23 MS. BOWER: Thank you, your Honor.

24 THE COURT: This is without prejudice once you get the  
25 funding information, etc., to say you want more with a new

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1 targeted request.

2 MR. LAZAROFF: Thank you, your Honor.

3 THE COURT: All right. That is my secretary telling  
4 me it's time to come downstairs for the conference call. So  
5 that takes care of 1B -- 1A. 1B you agreed on. Is there -- to  
6 try to knock off 1C, are there communications with President  
7 Condé that don't relate to mining? I mean, are we dancing on  
8 the head of a pin here?

9 MS. BOWER: We don't believe we are, your Honor.  
10 We've agreed to go back to 1995, so -- excuse me, 2005. So  
11 we're talking about a 12-year period, five years before the  
12 election. We believe that there -- it's our understanding, at  
13 least, that there was a relationship. What the extent of that  
14 relationship is, I'm not certain, your Honor.

15 THE COURT: All right. Is there any reason, with  
16 respect to this to deal, with any communications before he  
17 became president from the plaintiffs' side?

18 MR. LAZAROFF: Our allegations, your Honor, are that  
19 President Condé was used in part of the scheme from external  
20 sources, and we've alleged it began around the time he was  
21 elected. A little before, a little after. So maybe, just to  
22 make sure we're covering the ground, if we could go back maybe  
23 a year prior to the election. We, obviously, don't know what  
24 we don't know. We know there was a relationship. We have  
25 indications of manipulation.



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1 THE COURT: Manipulation of what?

2 MR. LAZAROFF: Condé in order to -- the allegations in  
3 the complaint, your Honor, are that defendants, in order to  
4 target our clients, manipulated by funding -- providing funding  
5 and rewriting the mining code and purposely targeting only  
6 BSGR. They control --

7 THE COURT: All of that --

8 MR. LAZAROFF: They all controlled these various  
9 officials or duped them, more likely, though we don't know.

10 THE COURT: Couldn't have done anything before they  
11 were elected. Might have set the stage.

12 MR. LAZAROFF: Might have set the stage, which is why  
13 I thought maybe a year prior to that seemed reasonable. And  
14 they claim --

15 THE COURT: Counsel.

16 MR. LAZAROFF: Yes.

17 THE COURT: When I start to talk, you stop.

18 MR. LAZAROFF: I'm sorry, your Honor.

19 THE COURT: All right. If we limit it to the time  
20 when Condé was president, meaning president forward, is there  
21 any issue of mass communicating other than about mining  
22 activities?

23 MS. BOWER: There are other activities in Guinea, your  
24 Honor. We know that there were serious issues post --  
25 post-replacement of the military regime and the democratic

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1 election. We know there were issues with respect to rice  
2 production, for example, some civil rights issues and other  
3 economic development. So there are other communications  
4 relating to Guinea between Mr. Soros and President Condé.

5 THE COURT: All right. Limit it to iron ore -- well,  
6 to mining activities or general things; meaning, if it's rice  
7 production, you don't have to produce it. If it's general  
8 conditions in Guinea, or whatever, you do have to produce it,  
9 again, subject to coming back and saying that there is so much.  
10 And presumably -- and I may be a little simplistic here -- but  
11 presumably this is easy to find communications with Condé.  
12 It's then only a question of reviewing them.

13 MR. LAZAROFF: Your Honor, if we could just ask also  
14 for any mentions of BSGR or Steinmetz.

15 THE COURT: Yes, that makes sense.

16 MS. BOWER: We've already agreed to that, your Honor.

17 MR. LAZAROFF: Just making sure.

18 MS. BOWER: We've agreed not to limit references to  
19 them.

20 THE COURT: Why don't you all try to work your way  
21 through 1D while I take care of my conference call, and we will  
22 resume as soon as I'm done with that, hopefully 15 minutes to  
23 half an hour.

24 MS. BOWER: Thank you, your Honor.

25 MR. LAZAROFF: Thank you, your Honor.

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(Recess)

THE COURT: All right. Did you manage to resolve 1D?

MR. LAZAROFF: We did, your Honor.

THE COURT: Good. So now we flip over to a defense issues. Why don't you explain to me what the relationship is with Pentler, and we'll go from there.

MR. LAZAROFF: Sure. Your Honor, there is no current relationship with Pentler or any of these other individuals. We told the defendants that. The articles that they brought simply show that at some point almost a decade ago he may have been a shareholder to the best of my -- we won't be producing, but actually from ICSID there is publicly available documents that can show the organizational structure and show that, I believe, that those shares were then bought back by BSGR. But they were never employees, never had their documents.

To the extent anything is on the BSGR computer systems or in anybody's data and it's there, we would not hold any of it back. The only problem we have is there were documents, and if they're a third party, produced by and in the LCIA where there, both by rules of LCIA as well as by a confidential confidentiality order, we're not allowed to produce, and they've objected in the past to that production. So that is, if you will, the Pentler side. All the other entities, they're not our employees, haven't been. Cilins wasn't -- even his plea in that case doesn't show that he was. We told them that.

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1 I don't think they've met any burden they have to require us to  
2 do anything more at this point.

3 THE COURT: All right. You referred to LCIA. Is that  
4 the London arbitration?

5 MR. LAZAROFF: Correct, yes.

6 THE COURT: So who's documents --

7 MR. LAZAROFF: Pentler's documents, and we put this in  
8 our response to their document requests. They were  
9 Pentler-produced documents in the LCIA proceedings subject to a  
10 confidentiality order generally of LCIA and, evidently,  
11 particularly with regard to that proceeding which, I'm told, is  
12 itself confidential. I don't know -- yes.

13 THE COURT: All right. On the defense side.

14 MS. BOWER: Your Honor, significant public references  
15 tying Pentler Holdings and one of its apparent principals,  
16 Mr. Cilins, directly to the allegations underlying this case  
17 and directly to BSGR as either some sort of affiliate or  
18 subsidiary within the family of BSGR-related companies, and  
19 Mr. Cilins specifically as a representative or agent on behalf  
20 Mr. Steinmetz.

21 THE COURT: Why don't you subpoena Mr. Cilins, since  
22 he is perhaps still in the Southern District of New York,  
23 probably at the MCC across the street. And if not, you can  
24 find out what prison he's in and subpoena him and cut out the  
25 middleman. Obviously, and let me be clear, to the extent BSGR

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1 has any Pentler- or Cilins-related information other than what  
2 came through the London arbitration, which we will talk about  
3 separately, you have to produce it.

4 MS. BOWER: Obviously, your Honor, we will now pursue  
5 efforts to obtain discovery directly from Mr. Cilins, and  
6 hopefully he is still in the United States and that is a  
7 possibility. But given his relationship, frankly, it's  
8 something we think is an unfair burden to put on the defendants  
9 to pursue that. And if discovery is afforded to us and it  
10 becomes clear that there was a relationship and this was just  
11 an end run around the party discovery, we may be back.

12 THE COURT: The query -- there are relationships and  
13 there are legal issues. Mr. Cilins may well have been an  
14 associate of Mr. Steinmetz. That doesn't mean, as a matter of  
15 law, that Mr. Steinmetz has control over Mr. Cilins' documents.

16 MS. BOWER: Understood, your Honor.

17 THE COURT: Obviously, if discovery from whatever  
18 forum proves any of the allegations that lawyers are making to  
19 me to be untrue, there will be consequences.

20 MR. LAZAROFF: Your Honor, if I --

21 THE COURT: Let me just ask, Ms. Bowers, anything you  
22 want to argue about the confidentiality with respect to the  
23 London arbitration?

24 MS. BOWER: It's a little difficult to argue when we  
25 don't know the confidentiality provision. We believe that

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1 there's a need for these documents in this case and would ask  
2 that, to the extent that there is relief available under the  
3 confidentiality order, that we be entitled to apply for that  
4 relief and that you enter an order directing plaintiffs to  
5 produce any documents received in the arbitration proceeding in  
6 this case subject to the confidentiality agreement that is  
7 entered in this case.

8 THE COURT: But if it were another district court  
9 order, we have ways informally and formally to work it out.  
10 With respect to the London arbitration, to the extent there is  
11 a representation -- and I assume that's what I've just  
12 gotten -- that they do not have the authority to give you the  
13 Pentler documents; correct?

14 MR. LAZAROFF: Yes, your Honor.

15 THE COURT: Then, you know, query whether you have the  
16 right to intervene in the London arbitration for purposes of  
17 getting that material. My guess is there's no way to do that.  
18 Where is Pentler located?

19 MS. BOWER: We believe they're registered in the  
20 British Virgin Islands, your Honor.

21 THE COURT: Usually we do much better with British  
22 entities than others in terms of Hague Convention. Any idea  
23 what the Hague Convention is with respect to BVI?

24 MS. BOWER: Members of my team know the answer to that  
25 question, your Honor, but I do not presently know the answer to

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1 that question.

2 THE COURT: I have no problem with you issuing a  
3 request through the Hague or whatever is the appropriate way to  
4 do it. I have had great success with Hague requests to the UK.  
5 I can't speak about BVI. And I will require, if you do go that  
6 route, for you to work with plaintiffs' counsel and eliminate,  
7 either through your negotiations or bringing it back to me, any  
8 objections that plaintiffs may have so that it can be presented  
9 to BVI authorities as all the parties to this case agree to the  
10 request, subject only to whatever Pentler may object over  
11 there.

12 MS. BOWER: Thank you, your Honor.

13 With respect to the confidentiality order, may we ask  
14 whether there is a provision in that order allowing for  
15 documents to be produced pursuant to an order of the court?

16 MR. LAZAROFF: Your Honor, I have not seen the  
17 confidentiality order. I'm not sure I'm allowed to. I haven't  
18 seen it.

19 THE COURT: Well, BSGR is in that proceeding?

20 MR. LAZAROFF: I can inquire.

21 THE COURT: Inquire. And if there is a way -- I mean,  
22 if it says, for example, you may not produce it unless ordered  
23 by a court of competent jurisdiction, that's a different  
24 situation. So find that out, find out if it allows you to move  
25 on behalf of Mr. Soros for a waiver of that confidentiality or

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1 whatever would be the procedural way to go about this before  
2 the arbitration.

3 MR. LAZAROFF: Will do so, your Honor.

4 THE COURT: Now, in our rotating we go to -- all  
5 right. Does the defendant have any other relationship with FTI  
6 or the two individuals from FTI?

7 MS. BOWER: Your Honor, we actually resolved  
8 plaintiffs' item No. 2 as well.

9 THE COURT: So I guess we should go to plaintiffs'  
10 issue 3. Not resolved, I take it?

11 MS. BOWER: No, your Honor.

12 THE COURT: OK. Is there a real issue? In other  
13 words, does Mr. Soros have relations with the people covered by  
14 the sort of miscellaneous requests other than with respect to  
15 the mining issues in Guinea?

16 MS. BOWER: Well, your Honor, some of these requests  
17 are quite broad and not specific to individuals. So if we're  
18 looking at request No. 23, it asks defendants to produce all  
19 documents and communications concerning any payments solicited  
20 or received from mining companies or their principals in the  
21 Republic of Guinea. That would, as I've explained to  
22 plaintiffs, literally capture any reference there may be to any  
23 contract in the mining industry in Guinea, even if it's just a  
24 news report that some mining company paid X amount of money for  
25 their mining rights.



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1 THE COURT: Well, let me understand this request. Are  
2 these payments to Soros, from Soros, or what is 23 asking for?

3 MR. LAZAROFF: It's payments -- first of all, let me  
4 just clarify on this particular one, we don't need publicly  
5 available newspaper articles on that one. But having said  
6 that, I believe we're looking for documents and communications  
7 that would concern payments made or directed to or from Soros  
8 or OSF-related entities, to or from mining companies and their  
9 principals by the Republic of Guinea.

10 THE COURT: Does that help?

11 MS. BOWER: I believe that helps, your Honor. I would  
12 be willing to take a look at that and assess burden, to the  
13 extent that there are significant relationships with other  
14 mining companies in Guinea.

15 THE COURT: One might ask, other than that you didn't  
16 have enough time, why this sort of meet and confer in front of  
17 the Court is necessary; meaning, why you didn't all figure out  
18 what he meant by this request through your discussions?

19 MS. BOWER: I mean, I can represent for probably both  
20 sides, we did spend a significant amount of time going back and  
21 forth.

22 THE COURT: More time, obviously, would have helped.

23 MS. BOWER: I think it's also helpful when you sort of  
24 have the guidance of the Court that we received this morning on  
25 some of these issues to have greater clarity on where we're

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1 headed with discovery in this case.

2 THE COURT: How do you want to handle -- I mean, there  
3 are, I don't know, ten requests here, and it sounds like what  
4 is the issue with one is not necessarily the issue with the  
5 other.

6 MR. LAZAROFF: Your Honor, most of these -- and I  
7 acknowledge there may be one or two outliers of this -- most of  
8 these are trying to get at the allegations in paragraph 80 of  
9 our amended complaint and elsewhere that there was a  
10 manipulation of the mining review, mining contract, and process  
11 where ended up being targeted to our client. So Mr. Mebiame,  
12 in paragraph 86, in his criminal -- the affidavit related to  
13 that says that the whole mining review process was a sham. We  
14 have other documents indicating that it was -- and comments  
15 from other people that it was targeted at our client. So we  
16 would like -- most of these requests, we're looking at 30, 31,  
17 42, those ones in particular are focused on that as well as, I  
18 guess, 27. And then there's requests which go to the financial  
19 support, directly or indirectly, of the Republic of Guinea to  
20 support -- the same mining contract review process or the new  
21 mining codes. It's actually very specific to a particular  
22 process. And then their meetings should also be --

23 THE COURT: Stop, stop.

24 MR. LAZAROFF: Sorry.

25 THE COURT: Stop. Is there a real distinction between

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1 mining and iron ore mining here?

2 MS. BOWER: Our understanding of the review process is  
3 that defendants were involved in and that affected plaintiffs  
4 was iron ore mining, your Honor. So we --

5 THE COURT: But the question is, were you involved in  
6 any other mining that wasn't iron ore mining? Because that's  
7 what you're fighting over. And if those two mean one in the  
8 same, why are we having this discussion? So unless you can  
9 tell me that, yes, you had discussions not just about the new  
10 mining code, which would cover iron ore mining and perhaps  
11 something else, but you had discussion about the gold mining,  
12 why are we having this discussion?

13 MS. BOWER: Your Honor, we're willing to track your  
14 prior ruling and look at documents concerning mining in Guinea,  
15 and unless there's some burden, we will proceed on that front.

16 THE COURT: All right. Does that, on the plaintiffs'  
17 side, take care of all of these, or is there anything else?

18 MR. LAZAROFF: Yes, your Honor. Thank you very much.

19 THE COURT: All right. So that takes care of all of  
20 plaintiffs' requests. So now we're back to the defendants'  
21 letter. You want to clarify what your definition of Steinmetz  
22 is and isn't for this purpose.

23 MR. LAZAROFF: Your Honor, we've actually resolved  
24 that issue.

25 THE COURT: All right. No. 4.

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1 MS. BOWER: Well, I'm sorry, your Honor. I just want  
2 to make sure we understand, for the sake of the record, that we  
3 understand that plaintiffs are agreeing to produce  
4 Mr. Steinmetz's data, not just with respect to data that may be  
5 possessed by the named plaintiffs in this case, but rather, any  
6 device or entity where they believe there is relevant  
7 information to these claims relating to Mr. Steinmetz. Is that  
8 a fair representation?

9 MR. LAZAROFF: That is, your Honor.

10 THE COURT: Good. No. 4, is that moot other than the  
11 London --

12 MR. LAZAROFF: I'm sorry. Go ahead, your Honor.

13 THE COURT: Item 4, production from prior litigations,  
14 other than the London arbitration we've already talked about,  
15 what are we talking about here?

16 MR. LAZAROFF: Your Honor, if I could just add one  
17 amendment to the issue of No. 3, which I don't think defendants  
18 will disagree with, is that that was a reciprocal understanding  
19 of devices and searches; that we're going to go to the places  
20 that we believe the custodians are likely to have had relevant  
21 documents.

22 MS. BOWER: That is correct, your Honor. The lack of  
23 clarity was because plaintiffs have told us that Mr. Steinmetz  
24 is not a principal of any of the plaintiffs.

25 THE COURT: OK. No. 4.

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1 MR. LAZAROFF: No. 4, your Honor, so the defendants  
2 have asked for 60 requests -- or close to 60, 58 -- getting at  
3 the relevant issues. The issues in LCIA, just for example,  
4 which I can't fully tell you, but there's a contract dispute  
5 between business partners, and there are issues that are not  
6 related to here. So to simply blanket assert without even  
7 trying to show -- which I realize they can't do because they  
8 don't know what it's about -- however, to blanketly assert  
9 anything produced there by our client should be relevant here  
10 when we have the 58-plus requests that get at in, I think, a  
11 very effective, maybe sometimes overly broad way, these  
12 documents in those disputes would be improper, and the same is  
13 true in some of the other -- the two other actions, the ICSID  
14 and Rio Tinto. ICSID also involved disputes and certain  
15 aspects of the contract between Guinea and BSGR that aren't  
16 related to the allegations in the complaint. By the way, the  
17 majority of ICSID, I believe, is public, available on their  
18 website. We'll produce anything that's public. We're not  
19 trying to hold anything back that's relevant. There are  
20 some --

21 THE COURT: Slow. The London arbitration is  
22 between --

23 MR. LAZAROFF: Vale, BSGR.

24 THE COURT: That's the one that the Pentler documents  
25 are --

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1 MR. LAZAROFF: Correct, correct, your Honor.

2 THE COURT: All right. As to that arbitration,  
3 anything you have produced there that is relevant to any of the  
4 requests here need to be produced. No disagreement on that;  
5 right?

6 MR. LAZAROFF: No disagreement, your Honor.

7 THE COURT: Anything you have received from other  
8 parties in that arbitration besides Pentler that you are free  
9 to produce that are relevant, you will do so.

10 MR. LAZAROFF: Correct, your Honor. I don't believe  
11 there are any that fall into that category. I'll go check  
12 that.

13 THE COURT: All right. So now we go to the BSGR  
14 litigation with Rio Tinto. Produce whatever you have.

15 MR. LAZAROFF: Without regard to the confidentiality  
16 order there, or anything that we produced in that action?

17 THE COURT: The confidentiality order would have been  
18 entered by me.

19 MR. LAZAROFF: Correct.

20 THE COURT: Give notice to the other parties.  
21 Certainly anything you produce is not protected by the  
22 confidentiality order. Anything they produced to you, produce  
23 subject to the same limitations that existed in that  
24 confidentiality order, but only after notice to Vale, Rio  
25 Tinto, whoever. My recollection --

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1 MR. LAZAROFF: I believe they've been destroyed,  
2 actually, the third-party documents per the confidentiality  
3 order, but --

4 THE COURT: Then if you actually did what the  
5 confidentiality order required, which half the time people  
6 don't do, just tell them that.

7 MR. LAZAROFF: OK.

8 THE COURT: All right. Does that finish the issue of  
9 No. 4 from both sides' points of view?

10 MS. BOWER: Well, our request with respect to four,  
11 your Honor, is that we receive whatever plaintiffs produced.  
12 We weren't trying to pry behind productions by other parties,  
13 just --

14 THE COURT: Then that's even easier.

15 MS. BOWER: Just for clarity. But they have told us  
16 that they're only going to produce what is otherwise responsive  
17 to our other requests, and our request was produce what you've  
18 provided in these proceedings.

19 THE COURT: As to the Vale/Rio Tinto, produce  
20 everything you've produced regardless.

21 MR. LAZAROFF: Your Honor, with all due respect, there  
22 are issues that were raised there that are irrelevant here.  
23 When your Honor said it before, you said "relevant," which  
24 we're happy to embrace because we want to produce everything  
25 that is relevant. But it's understanding that there are

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1 documents, because there were issues raised there and fights  
2 between the parties, that have nothing to do with the issues  
3 here.

4 THE COURT: Such as?

5 MR. LAZAROFF: One second, your Honor.

6 THE COURT: Frankly, my recollection is some of the  
7 discovery there had to do with whether BSGR was subject to  
8 jurisdiction here, which, obviously, is moot because you're the  
9 plaintiff, but --

10 MR. LAZAROFF: Are you talking about Rio Tinto or  
11 LCIA?

12 THE COURT: Rio Tinto.

13 MR. LAZAROFF: Rio Tinto. We don't have -- your  
14 Honor, I thought you were talking about the LCIA.

15 THE COURT: LCIA, I know may have things, but do a  
16 rough equivalent of a privilege log for what you are not  
17 producing from your production there.

18 MR. LAZAROFF: In Rio Tinto?

19 THE COURT: The London arbitration. You will produce  
20 what you produced there that is otherwise relevant to their  
21 discovery. To the extent you say there are aspects of that  
22 arbitration that are not relevant here, you will do, not on a  
23 document-by-document basis but on a category basis, what you  
24 produced in the London arbitration that you don't think you  
25 have to produce here because they're on subjects not relevant



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1 to this litigation, and then you all can fight about that, and  
2 I'm sure I'll see you all again.

3 As to what you've produced in the Southern District,  
4 Rio Tinto against Vale litigation, everything you've produced,  
5 produce.

6 MR. LAZAROFF: Thank you, your Honor. The only caveat  
7 I add -- and I don't know if I need to add it, so I just beg  
8 your Honor's forbearance -- is that I'm not -- we should be  
9 able to describe the documents, I believe -- I just have to  
10 check -- because that's just describing our documents. I  
11 remain very concerned about whatever the confidentiality  
12 concerns are they have, as I've been told a number of times.  
13 If there's any issue for some reason, we'll bring it to  
14 defendants' attention and, if we need to, to your Honor's  
15 attention.

16 THE COURT: OK.

17 MS. BOWER: Your Honor, if I could just have a  
18 clarification. There were three proceedings at issue in these  
19 requests, the third one is the ICSID arbitration currently  
20 pending between plaintiffs and the Republic of Guinea. And we  
21 would ask that the same rules apply to that proceeding as well  
22 and that they produce whatever's been produced by them in that  
23 proceeding.

24 MR. LAZAROFF: I believe, to the extent that there are  
25 documents in ICSID that are responsive, relevant, and not

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1 covered by any confidentiality concerns --

2 THE COURT: They're your documents. They can't be  
3 covered by a confidentiality concern.

4 MR. LAZAROFF: We're talking only about our documents,  
5 plaintiffs' document.

6 THE COURT: Yes.

7 MR. LAZAROFF: So to the extent they're responsive and  
8 relevant, we will produce them.

9 THE COURT: Again, any reason why you shouldn't  
10 produce at all? Is there something --

11 MR. LAZAROFF: Again, I understand that there are some  
12 issues that go to whether they had qualifying investments under  
13 the investment code of the Republic of Guinea from 1995, issues  
14 related to Liberia in relation to an infrastructure development  
15 agreement that I don't think have anything to do with the  
16 issues here. It does overlap very strongly with some of the  
17 issues here, but not --

18 THE COURT: Produce it all unless there is something  
19 so sensitive that you give them enough information about it,  
20 and either they agree or you're willing to take your chance  
21 coming back to me on it. But right now, basically, since your  
22 argument is that Soros interfered with your rights in Guinea  
23 and you're otherwise fighting with Guinea as to your rights in  
24 Guinea, seems to me the overlap is sufficiently significant  
25 that a full production makes more sense.

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1 MR. LAZAROFF: If I can just confer with my colleague  
2 for one second?

3 THE COURT: You can even perhaps let them speak  
4 directly.

5 (Pause)

6 MR. LAZAROFF: Nothing else, your Honor. Thank you  
7 very much.

8 THE COURT: All right. Anything else from the  
9 defense?

10 MS. BOWER: No, your Honor. Thank you.

11 THE COURT: When do you all think you have a need to  
12 come see me again?

13 MR. LAZAROFF: Maybe, your Honor, we should set a  
14 tentative date which, if we don't need it, we won't. If your  
15 Honor's amenable, you said the next two weeks are not good for  
16 you, maybe the week -- I think it's the week where Thursday and  
17 Friday are Rosh Hashanah, the 21st. Monday, Tuesday, or  
18 Wednesday, we'll see if the Court's available.

19 MS. BOWER: I'm sorry. I had to give up my device, so  
20 I'm not sure which week we're referring to.

21 MR. LAZAROFF: The 21st, I believe.

22 THE COURT: I guess my question for all of you is,  
23 really? Every two weeks you're coming back to see me?

24 MS. BOWER: My response was going to be, your Honor, I  
25 don't think we have a need at this point to schedule another

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1 conference. So defendants will leave it at that.

2 THE COURT: All right.

3 MR. LAZAROFF: If it were possible, it doesn't have to  
4 be the week of -- that's actually the 18th -- or the 25th?  
5 Your Honor, I think it helps the parties move if they know  
6 there's a date we may come see you. We hope not to.

7 THE COURT: Let's try to get you to get along for  
8 almost a full month and put you down for September 27 at 10:00  
9 a.m. And, obviously, the usual drill, if you have a problem  
10 before then, write a letter via ECF. Whether I'm here or not,  
11 all those letters find me, unfortunately or fortunately, in  
12 this connected world. And if you don't need the conference,  
13 two business days before, jointly write a letter saying,  
14 Believe it or not, Judge, we're getting along. Don't need to  
15 see you -- this is Friday sarcasm at work -- and suggest a week  
16 or time that you would like it adjourned to.

17 For the future, get your smart pass so you can bring  
18 your phone in to make your schedule more accessible, or if not,  
19 print your calendar for the next weeks to month, month and a  
20 half after you're seeing me so you'll know when you can come  
21 back.

22 All right. Usual drill, parties are ordered to  
23 purchase the transcript, getting you a 50/50 split when you  
24 both order it. With that, we are adjourned.

25 (Adjourned)